



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Shelby K. Long  
County Attorney  
Jefferson County  
Beaumont, Texas

Dear Sir:

Opinion No. O-6505  
Re: Accountable and unaccountable fees in tax suits.

We acknowledge receipt of your request for an opinion on the above matter, said request reading as follows:

"Some years ago the County Attorney of this county filed numerous tax suits. Judgments were taken in a number of these cases, but no execution was ordered or issued. Now the taxes are being paid requiring that these judgments be satisfied before the property can be released from this lien. The question is whether or not the County Attorney performing these duties in preparing and filing the suits and taking the judgments thereof, the tax was never collected, and having been out of office for over ten years is entitled to receive these fees that he would have received had the money been paid in to him during his term of office or the period not to exceed two years from the expiration of his term. Question No. Two is since the District Clerk and other county officials of Jefferson County have been taken off of the fee system and paid an annual salary, may these fees be now claimed by office holders who have continued in office since such time and be applied on their fees if they failed to make the maximum of any particular year in which the suit was filed and judgment taken, or may these fees be considered as an unaccountable fee and

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taken by the office holder as such, irrespective of the fact that he might have made his maximum during any particular year for which he claims the fee was earned. Prior to 1923 these facts were accountable and were taken into consideration to be used in making the maximum allowed by statute. Subsequent to 1923 these fees were declared unaccountable fees (Citing Mills County v. Thompson, 66 S. W. 48; Article 3894, R. C. S. 1925; McKinsey v. Hill County, 263 S. W. 1073; Dallas County v. Bolton, 158 S. W. 1152; Article 3892, R. C. S. 1925; Cartin v. Harris County, 242 S. W. 444; Eastland County v. Hazel, 288 S. W. 518; Nichols v. Galveston County, 228 S. W. 547). I have reached the conclusion from the authorities and others cited herein that the fee is not earned until the whole procedure of collecting the tax has been carried out, resulting in the final payment of the tax. If this be true, the officials, both in and out of office, would have no claim to any fee that would have been earned had judgment been taken, execution ordered, sale made, property sold, taxes collected at the time when the officers were on a fee basis. However, I have not been able to find a case directly in point with the question that we have in this county, that involves the interpretation of statutes. I would like your opinion as to what, if anything, these officials are entitled to receive."

You do not state when the County Attorney referred to by you and who performed the services in the tax suits mentioned was in office other than that he had been out of office over ten years; therefore, we are limiting this opinion to the period of time between January 1, 1931, the effective date of Acts 1930, 41st Leg., 4th C. S., p 30, ch. 20, Sec. 9, amending Art. 7332, Vernon's Annotated Civil Statutes, and the date said County Attorney went out of office, which we are assuming was after January 1, 1931.

As so amended, said Art. 7332 contained the following provisions relative to the fees of the County Attorney inquired about by you, viz:

" . . . .

" . . . .The attorney who institutes a suit and has prosecuted the same to judgment in the district court shall receive all fees allowed

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under this Article even though he has been succeeded in office by another attorney; provided, in case the judgment is appealed, then, and in that event, the attorney who secured the judgment shall be entitled to an equal division with his successor in office of the fees allowed therein, and the same shall be paid to him whenever collected, regardless of the time when collected, but said fees shall be subject to the provisions of this Chapter and the Fee Bill pertaining to the maximum amount allowed." (Emphasis ours). . .

Sec. 10 of Acts 1930, 41st Leg., above referred to, contained the following provisions:

". . . .

". . . . Officers named in Articles 3883 and 3883-A in counties having a population of twenty-five thousand or less as well as in all other counties shall make the report and keep the statement required in Articles 3896 and 3897, and shall be subject to the limitations and requirements of the Fee Bill." (Emphasis ours)

Art. 7332 of V. A. C. S. was amended by Acts 1931, 42nd Leg., p 428, Ch. 258, Sec. 1, and Acts 1931, 42nd Leg., 2nd C. S., p 31, ch. 16, but the provision that all of the fees provided for the officers therein named, which are the officers referred to by you in your opinion request, shall be treated as fees of office and accounted for as such was retained in each of said amendments. Therefore, all of the fees referred to herein are subject to the Maximum Fee Bill and are required to be accounted for as fees of office.

Art. 3892 of said statutes is in part as follows:

"Any officer mentioned in this Chapter who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation authorized by Articles 3883, 3883-A, and 3886 for the year in which such delinquent fees were charged, and also retain the amount of excess fees authorized by law, and the remainder of the delinquent fees for that

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fiscal year shall be paid as herein provided for when collected; provided, the provisions of this Article shall not apply to any officer after one year from the date he ceases to hold the office to which any delinquent fee is due, and in the event the officer earning the fees that are delinquent has not collected the same within twelve months after he ceases to hold the office, the amount of fees collected shall be paid into the county treasury. . . ."

Art. 3891 of said statutes, as amended by Acts 1930, 4th C. S., p 30, ch. 20, was in part as follows:

" . . . . All fees collected by officers named in Articles 3883, 3883-A and 3886, during any fiscal year in excess of maximum amount allowed by law, and of the amounts of excess fees allowed by this Article for their services, and for services of their deputies, or their assistants as herein provided for, shall be paid into the county treasury of the county where the excess accrued, . . . ."

Art. 3891 was amended by the 42nd Leg., p 870, ch. 368, and by the 43rd Leg., p 734, ch. 220, but no material change was made in the above quoted provision. Therefore, during all of the time covered by this opinion, the requirement of Art. 3891 was that the excess fees not used in payment of salaries, etc., as authorized by law, should be paid into the county treasury.

Art. 3897 of the Rev. Civ. Stat. of 1925 provided that the officers named in Art. 3883 of said statutes should make sworn statements at the close of each fiscal year to the district courts of the counties in which they resided, showing the amount of fees collected by them during the fiscal year and the amount of fees charged and not collected, and by whom due. This statute was also amended by the 41st Leg., 4th C. S., p 30, ch. 20, and said officers were not required by said amendment to show the amount of fees charged and not collected, or by whom due. This statute was not again changed until after the time the county attorney referred to by you had gone out of office. However, it is our opinion that the fact that the county attorney in question was not required to file a report of delinquent fees charged and not collected makes no difference

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here, for had he filed the report authorized by Art. 3892, the fees here in question were not collected within one year from the date he ceased to hold said office so as to authorize him to use same in making up his maximum. In any event, if said fees were not reported as delinquent fees, he could have no claim thereto.

In view of the foregoing statutes, it is our opinion that the fees taxed as costs in favor of the county attorney in the tax suits referred to should be paid into the county treasury, since said county attorney has been out of office more than one year before said fees were collected.

In the case of Cameron County vs. Fox et al, 61 S. W. (2d) 483, the Commission of Appeals was passing in part upon an act passed by the Legislature in 1897 (Art. 7691, Rev. St. 1911) which provided as follows:

"The collector of taxes, for preparing the delinquent list and separating the property previously sold to the state from that reported to be sold as delinquent for the preceding year, and certifying the same to the commissioners' court shall be entitled to a fee of one dollar for each correct assessment of the land to be sold, said fee to be taxed as costs against the delinquent. . . ."

In passing upon when such fee to the tax collector was earned, the Court held as follows:

". . . .The fee was earned when the services prescribed in article 7691 (R. S. 1911) were performed. The fee became due at that time, and was chargeable against the delinquent, although the enforcement of collection depended upon contingencies incident to the enforced collection of the delinquent taxes involved. . . ."

As to the district clerk and other county officials of Jefferson County, which other county officials would be the county clerk and sheriff or constable named in Art. 7332 of V. A. C. S., it is our opinion the fees due them would be governed by the rules hereinabove laid down. If the fees charged for said officers, or any of them, were reported as delinquent for the year

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in which the services were performed and said officers are still in their respective offices, or had not ceased to hold such offices more than one year prior to the collection of said fees, and such fees, or any part thereof, are needed to complete the maximum compensation authorized by law for the year in which they were charged, they are entitled to retain such part of such delinquent fees as is sufficient to complete such maximum compensation, as well as the excess fees authorized by law. The remainder, if any, of such delinquent fees shall be paid into the county treasury.

We trust that this satisfactorily answers your inquiry.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

BY *Jas. W. Bassett*  
Jas. W. Bassett  
Assistant

*Shelby K. Long*  
JWB:LLJ

